IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6906 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURAT MUNICIPAL CORPORATION - Petitioner(s)
Versus
RAMESHBHAI D. VAGHELA - Respondent(s)

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Appearance :
MR KD PANDYA for Petitioner,
MR KK TRIVEDI for Respondent,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 05/09/2007

ORAL JUDGMENT

1. Heard Mr.K.D. Pandya, learned counsel for the petitioner and Mr.K.K. Trivedi, learned counsel for the respondent.
2. The petitioner industry, being aggrieved by the award

dtd.19/2/2001 passed by the Labour Court, Surat in Reference (LCS) No.155 of 1992, is before this Court with a submission that the court below erred in answering the reference in favour of the respondent workman.

3. The facts necessary for disposal of the present writ application filed under Article 227 of the Constitution of India, are that a chargesheet was issued to the respondent workman alleging certain misconduct. Later on, an inquiry was made and finding the workman guilty of grave misconduct, he was ordered to be removed. Being aggrieved by the said discharge-cum-dismissal, the workman obtained a reference and submitted before the Labour Court that he was working as a technician, despite his duty chart, he was directed certain extra works which when he refused, his refusal was taken to be misconduct on his part. He also submitted that after four new technicians joined the industry, trouble started against his career and ultimately the industry got rid of him. He also submitted that the inquiry was absolutely illegal and the findings recorded in the said inquiry were perverse.

4. After receiving the notice present petitioner appeared before the Labour Court and filed its written statement submitting inter-alia that the Labour Court had no

jurisdiction to try the matter, the inquiry was absolutely justified, there was no violation of the rules relating to disciplinary inquiry nor there was violation of principles of natural justice and as the findings recorded by the inquiry officer / disciplinary authority were based upon the evidence available on the records, the Labour Court had no jurisdiction to reopen the inquiry, nor was entitled to re-appreciate the evidence.

5. After recording the evidence and hearing the parties, the learned Labour Court held that it had jurisdiction to hear and decide the matter. It also held that the findings recorded by the inquiry officer / disciplinary authority were contrary to the evidence available on the records. It held that the findings were perverse and also held that the establishment / industry was not entitled to rely upon the alleged earlier misconduct in relation to which chargesheets were issued earlier, but no final conclusion was arrived at, it accordingly directed reinstatement of the of the respondent employee with 50% back wages and also granted benefit of continuity of service. The industry being aggrieved by the said award is before this Court.

6. Mr.Pandya, learned counsel for the petitioner has raised

manifold arguments which I will take up in seriatim.

7. Mr.Pandya, learned counsel for the petitioner submitted that the Labour Court had no jurisdiction to hear and decide the matter, as the subject in dispute was falling under Schedule III appended to the Industrial Disputes Act, 1947 (“the Act” for short). After taking me through Sec.7A Schedule II and Schedule III of the Act, he submitted that a reference could only be made to the Industrial Tribunal.

8. Sec.7, 7A and 7B of the Act relate to establishment and constitution of Labour Courts / Industrial Tribunals and National Tribunals. The second schedule refers to the matters which would fall within the jurisdiction of the Labour Court, while Sec.7A refers to those subjects which would fall within the jurisdiction of the Industrial Tribunal. Item No.3 of Schedule II refers to “discharge or dismissal of workman including reinstatement of, or grant of relief to, workman wrongfully dismissed.”

9. Confronted with Item No.III, Mr.Pandya, learned counsel for the petitioner submitted that as the inquiry was in relation to rules of discipline falling under Item No.8 of third Schedule and as removal would amount to retrenchment, which would fall under Item No.10 of the

third Schedule, the matter should have been referred to the Industrial Tribunal.

10. True it is that an inquiry was made in relation to breach of rules of the discipline, the question if was only in relation to rules of discipline, their interpretation and effect, then, one could understand that the subject matter would fall within exclusive jurisdiction of the Industrial Tribunal. Mr.Pandya, submitted that a fair understanding of sec.7A of the Act would make it clear that the Industrial Tribunal would have jurisdiction to decide any matter whether specified in second schedule or third schedule, therefore, Industrial tribunal alone had jurisdiction.

11. In the opinion of this Court, if the arguments in its wide amplitude is accepted, then, every matter which relates to discharge or dismissal of the workman, will have to be referred to the industrial tribunal. When a Labour Court is constituted and is conferred with certain jurisdiction, then, such Labour Court, unless the law otherwise prohibits the Labour Court from exercising its jurisdiction, would always exercise the jurisdiction in accordance with law. If the inquiry was made in relation to breach of rules of discipline and the end result was discharge or

dismissal of the workman, then the subject matter would fall under Item No.III of the second schedule and a Labour Court having territorial jurisdiction over the subject, would have jurisdiction to decide the matter in accordance with law. The objection raised by the learned counsel for the petitioner being meritless and misconceived, deserves to and is accordingly rejected.

12. It was next contended by the learned counsel for the petitioner that the learned court below while holding that the findings recorded by the disciplinary authority were perverse, erred in not appreciating the limits of its jurisdiction and unnecessarily opened the question of re-appreciation of evidence.

13. In a given case, where the Labour Court holds that the findings recorded by the disciplinary authority are not proper and yet another view is possible, then, High Court would certainly protect the findings recorded by the disciplinary authority, because, possibility of another view would not give jurisdiction to the Labour Court to re-appreciate the evidence and recording a finding which according to the Labour Court should have been recorded.

14. In the present case, after going through the evidence

available in the inquiry papers, the court did not say that yet another view was possible, the Labour Court was of the opinion that the findings were perverse.

15. When a question of perversity is raised, then, a court is required to see that whether the findings are based on the evidence available on the records or the court has misread the evidence, has read something which is not available on the records, or has refused to read something which is available on the records or has arrived to a finding which no prudent man can arrive at.

16. In the present case, the Labour Court held that the findings were perverse. After going through the discussions made in various paragraphs of the judgement / award, I find no hesitation in observing that the Labour Court was absolutely justified in holding that the findings were perverse.

17. Mr.Pandya, learned counsel for the petitioner, referring to the discussion contained under Issue No.5, submitted that the court below has recorded a finding that the conduct and behaviour exhibited by the respondent was not upto the mark and was disliked by others, therefore, this Court should also hold that the respondent workman committed misconduct. The said findings, in fact, do not

amount to a finding into the misconduct of the respondent. The Labour Court has simply observed that the manner in which the respondent was talking with others, was not liked by others. Lack of mannerism would not amount to misconduct. Misconduct would be something different. In the present matter if the respondent was talking in a language which was not appreciated by others and beyond that if nothing has been brought on the records, then it cannot be said that the Labour Court had recorded a finding against the interest of the respondent. Speaking for myself, if somebody does not address me properly, I may dislike it but that disliking would not amount to a finding into misconduct on the part of the person who is addressing me. To put an inconvenient question to a lawyer appearing before me, may not be liked by the counsel but that may not amount to misconduct. Misconduct would be something which is grave and serious in nature. Anybody and everybody if takes such ill-behaviour to be bad and does not like it, then, the action on the part of the workman may perilously border the act of misconduct and even if such is proved, then too, it is to be observed or found as a fact that it was done intentionally and was

not a part of the habit of the person who is coming from from a lower strata or a different part of the society. The said findings recorded by the Labour Court cannot be used against the interest of the respondent.

18. It was then contended by the learned counsel for the petitioner that the learned Labour Court, in the present set of the facts could not exercise the powers under sec.11A of the Act. Sec.11A of the Act refers to the powers which the a Labour Court, Tribunal and National Tribunal can exercise to give proper relief in case of discharge or dismissal of the workman. In a case where inquiry is found to be bad, findings by disciplinary body are held perverse then, the Labour Court is bound to exercise powers which are conferred upon it under sec.11A of the Act. Labour Court does not exercise its powers under sec.11A of the Act only in cases where it is interfering into the question of quantum of punishment. A Labour Court when a matter is referred to it for adjudication when records certain findings, then, it would make an award, set aside the order of discharge or dismissal and direct reinstatement on such terms and conditions as it thinks fit, beyond that the Labour Court / Tribunal has also powers to interfere into the question of

punishment if it finds that the punishment awarded to delinquent was shockingly disproportionate.

19. I asked Mr.Pandya, learned counsel for the petitioner that if the Labour Court was not to exercise the powers vested in it under sec.11A of the Act, which other powers the court below could exercise, Mr.Pandya was absolutely inarticulate, he did not say anything.

20. No other question was argued.

21. I find no reason to interfere in the matter. The petition deserves to and is accordingly dismissed with costs quantified at Rs.5000=00 (Rupees Five Thousand only) to be paid by the petitioner establishment to the respondent workman. Rule is discharged.

(R.S. GARG, J.)

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